

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ROBERTO LOBO FILHO,)	
)	
Plaintiff,)	No. C09-3802 BZ
)	
v.)	
)	
PETER MICHAEL SPANIER, et al.,)	ORDER GRANTING IFP
)	APPLICATION AND
Defendants.)	DISMISSING COMPLAINT
)	WITH LEAVE TO AMEND

Before the Court is Roberto Lobo Filho's ("plaintiff") application to proceed *in forma pauperis* ("IFP") pursuant to 28 U.S.C. section 1915, filed on August 19, 2009. For the reasons set forth below, the Court hereby **GRANTS** plaintiff's IFP application and **DISMISSES** plaintiff's complaint with leave to amend.

Under 1915(e)(2) a court must dismiss an *in forma pauperis* action which, construed liberally, is frivolous; fails to state a claim on which relief may be granted; or seeks monetary relief against a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2)(B); see Neitzke v. Williams, 490 U.S. 319, 325 (1989) (holding that an *in forma*

1 *pauperis* complaint may be dismissed as frivolous where it
2 "lacks an arguable basis in law or in fact"); see also Marks
3 v. Slocum, 98 F.3d 494, 495 (9th Cir. 1996) (per curiam);
4 Karim-Panahi v. Los Angeles Police Dep't, 839 F.2d 621, 623
5 (9th Cir. 1988). Plaintiff appears to be alleging that
6 defendants violated his civil rights and defamed him in a
7 conspiracy dating back to a town hall meeting in 2001.

8 To file suit in federal court, a plaintiff must invoke
9 federal jurisdiction. Generally, this means filing a case
10 that involves a question of federal law, or in which the
11 parties are citizens of different states and the amount in
12 controversy exceeds \$75,000. See 28 U.S.C. § 1331 and
13 1332(a).

14 Here, plaintiff cites several federal statutes, none of
15 which are relevant or give him a private right of action. A
16 "private right of action" simply means the right of a private
17 individual to bring a lawsuit. For example, plaintiff bases
18 several of his claims on 18 U.S.C. sections 241 and 245.
19 These statutes are criminal statutes which are meant to be
20 enforced by the federal government and cannot be enforced by
21 private individuals. See, e.g., Shahin v. Darling, 606 F.
22 Supp. 2d 525, 538 (D. Del. 2009). Plaintiff also appears to
23 claim he was defamed. Even if plaintiff has a civil claim for
24 defamation, he must file that in state court, unless he can
25 claim diversity jurisdiction - that is he is suing citizens of
26 other states - which he has not claimed.

27 To the extent that plaintiff raises claims based on the
28 injury of others, plaintiff has no standing to bring such

1 claims. To satisfy the requirements of standing, plaintiff
2 must meet three elements: (1) plaintiff must have been
3 injured, (2) the injury must be causally related to the
4 defendant, and (3) it must be likely that the injury will be
5 redressed by a favorable decision. Lujan v. Defenders of
6 Wildlife, 504 U.S. 555, 560 (1992). Plaintiff must state
7 specific facts which show how defendants have harmed him
8 personally and not how defendants have harmed others. It
9 should also be noted that plaintiff's defamation claim under
10 state law may also be barred by the statute of limitations.
11 This statutory requirement limits the time a plaintiff can
12 file suit. Cal. Civ. Proc. Code § 340(c). While it appears
13 that plaintiff may have alleged sufficient facts for a claim
14 of defamation under state law, plaintiff has not raised any
15 valid claims under federal law. Accordingly, plaintiff has
16 not asserted any basis for federal jurisdiction.

17 For the foregoing reasons, **IT IS HEREBY ORDERED** as
18 follows:

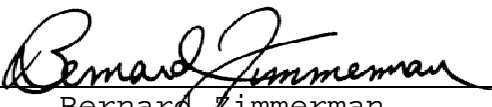
19 1. Plaintiff's complaint is **DISMISSED** with leave to
20 amend. If plaintiff desires to proceed with this lawsuit, he
21 must file an amended complaint by **September 30, 2009**. The
22 amended complaint should be a short, legible statement in
23 plain English that clearly states the facts that form the
24 basis for plaintiff's suit against defendants. At a minimum,
25 plaintiff should state how he believes defendants have harmed
26 him personally and the basis for jurisdiction. In amending
27 his complaint, plaintiff may wish to consult a manual the
28 Court has adopted to assist *pro se* litigants in presenting

1 their case. This manual is available in the Clerk's Office
2 and online at: www.cand.uscourts.gov. If plaintiff does not
3 amend or otherwise comply with this Order by **September 30,**
4 **2009**, this case may be dismissed.

5 2. By no later than **September 30, 2009**, plaintiff shall
6 consent to or decline magistrate judge jurisdiction. A form
7 is available online at: www.cand.uscourts.gov

8 3. Plaintiff's application to proceed *in forma pauperis*
9 is **GRANTED**, but the Marshal shall not serve defendant until an
10 adequate complaint is filed.

11 Dated: September 10, 2009

12 
13 Bernard Zimmerman
United States Magistrate Judge

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